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SUPREME COURT, U.S.

No. 07-681

SUPREME COURT OF THE UNITED STATES

October Term, 2007

WE THE PEOPLE, et al.,

Petitioners,

- against -

UNITED STATES, et al.,

Respondents

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

Whether the Government is obligated to respond with specific, formal answers to the questions contained in Plaintiffs Petitions for Redress of Grievances regarding violations of the war powers, money, privacy and tax clauses of the Constitution of the United States of America.

Whether Plaintiffs, having so petitioned, have the Right to act to hold the Government accountable if the Government refuses to respond.

CERTIFICATION

With regard to the two corporate Plaintiffs, the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc., both are not- for- profit corporations, neither has a parent company and neither has issued any stock.

TABLE OF CONTENTS

	Page
Questions Presented	i
Certification	ii
Table of Contents	iii
Table of Authorities	iv
A. ORIGINAL INTENT: REQUIRES THE COURT TAKE JURISDICTION	1
B. ABDICATION OF DUTY AND TREASON TO THE CONSTITUTION NOT TO TAKE JURISDICTION .	10
C. SHAMEFUL NOT TO TAKE JURISDICTION	12
CONCLUSION	12
CERTIFICATION	15

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Cohens v.Virginia,
6 Wheat. 264, 404 (1821) 11,12

Konigsberg v. State Bar of California,
366 U.S. 36, 50 n.10, (1961). 2

Marshall v Marshall, ___ U.S. ____ 12

Minnesota State v. Knight,
465 U.S. 217, 284 (1984) 9,13

Smith v. Ark. State, 441 U.S. 463 (1979) 9,13

We The People v U.S., 485 F.3d 140
(DC Cir., May 8, 2007) 10

CONSTITUTION

First Amendment ..... passim

OTHER REFERENCES

Thomas Jefferson Letter to William Johnson,
Supreme Court Justice, (1823) 1

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A. ORIGINAL INTENT: REQUIRES THE COURT TAKE JURISDICTION

"On every question of the construction of the Constitution, let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." Thomas Jefferson, Letter to William Johnson, Supreme Court Justice, 1823.

> "The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth." *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10, (1961).

This case arose because the Executive and Legislative branches took possession of a boundless field of power by stepping outside the boundaries drawn around their power by the war powers, money, tax and privacy clauses of the Constitution.

This case arose because the People claimed and exercised their fundamental, natural Right to Petition the Government for Redress of Grievances, petitioning the Executive and all 535 members of Congress to reconcile the differences between the Iraq Resolution and the war powers clauses, the Federal Reserve System and the money clauses, the USA Patriot Act and the privacy clauses, and the direct, un-apportioned tax on labor and the tax clauses.

This case arose because the Executive and the Legislative branches refused to respond to the People's repeated Petitions for Redress of the constitutional torts.

This case arose because the Executive aggressively retaliated against the People who claimed and exercised their fundamental, natural Right to

peaceably hold an unresponsive, tyrannical Government accountable to the Constitution, by retaining their money when all other means of Redress were proven ineffectual.

This case arose as the People turned to the independent Judicial branch, empowered to bind the other two branches with the chains of the constitution, regardless of the level of practical difficulty, political consequence or embarrassment.[1]

This case arose because the People needed to present to the non-responsive, tyrannical agents of the Executive branch a Judicially drawn declaration of the obligations of the Government under the Petition Clause.

This case arose because no court had ever declared the full contours of the meaning of the last ten words of the *First Amendment*, that is, the natural Rights of free individuals, acting in their private capacities, to Petition their Government for Redress of constitutional torts, the obligation of the Government to consider and respond to such Petitions, and the natural Rights of free individuals to act to peaceably hold a non-responsive, recalcitrant Government accountable to the Constitution.

This case arose because of Plaintiffs' claim and reliance upon the historical context and purpose of the Petition Clause – the Framer's intent behind the last ten words of the *First Amendment*.

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[1] Common knowledge.

Defendant has argued it is not obligated to respond to the People's Petitions for Redress of constitutional torts.

The record of this case includes the as yet un-refuted historical context and purpose of the Petition Clause, clearly demonstrating original intent and the substantive breadth of the Right.

The Record before the Court shows the Framer's intended Petition to serve a vital balancing role in a new political culture of reciprocal obligation and a carefully crafted balance of power between the People and the Government.

The Record before the Court shows that for decades following the American Revolution, Petitions might have been rejected on the merits, or might have been dismissed as totally frivolous or libelous, but they were never rejected on any ground akin to standing; their reception, consideration and response was largely automatic, even Petitions from the powerless disenfranchised, the dispossessed who were otherwise politically penurious, and the despised.

The Record before the Court shows the Framers' defended Petitioning as a natural, constitutionally guaranteed Right, the key vehicle necessary for the protection of the People from Government tyranny – the protector of all other Rights.

The Record before the Court shows one need look no further than the Declaration of Independence for evidence of the extraordinary importance the Framers' put on Petitioning and Government's obligation to consider and respond. The Framer's

intent is evident not only from the Declaration's enumeration preceding the ultimate complaint, but from the ultimate complaint itself -- that the colonists' Petitions fell on the King's deaf ears. This was the "capstone grievance." The Framers considered the Government's (the King's) ultimate violation was its sundering of the bonds of deference and obligation on which the hierarchial, but mutually respectful, legitimacy rested.

The following words of the Declaration survived intact through each edit of the text, save for the addition of "free" before "People."

> "In every stage of these oppressions we have petitioned for Redress in the most humble terms: Our repeated petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People."

The Record before the Court shows the Framers' intent was that Petitions be a <u>more active form of participation in self-governance than voting</u>

The Record before the Court shows the Framers' intent was that Petitions would be posted in public places, advertised in newspapers, and duplicated for simultaneous circulation, believing that the result of publicity and argument, especially when combined with their quasi-judicial status, would ensure that a Grievance was heard, investigated, deliberated, and acted upon.

The Record before the Court shows the Framers' intent behind the Petition Clause was reflected in the intensity that the colonists brought to the project of developing their State Republics, focusing not just on the creation of the machinery of government, but more so on the articulation of mechanisms that would ensure the participation of the citizenry in the activities of government. The clauses designed to preserve freedom and promote reasoned decisions by the government were drafted amidst an unprecedented popular discussion of ideas of representation, popular sovereignty, power of the people, and the public good.

The Record before the Court shows the Framers' intent that the early Constitutions, both State and Federal, reflect the aspirations of popular sovereignty via direct participation in the process of governance.

The Record before the Court shows the Framers' intent that those who governed the People were to be not the People's "betters," but their servants, that the old hierarchy of deference should no longer obtain, that government officials were due respect, but not obeisance.

The Record before the Court shows the Framers' intent that Petitions not be the prayers of supplicants, but the missives of a free people to their servants, that respect replace deference, and that it run both ways, as befitted a free people governing themselves.

The Record before the Court shows that throughout the debates preceding the adoption of the State

Constitutions, the federal Constitution and the Bill of Rights, no mention of the Petition was negative.

The Record before the Court shows the issues of popular sovereignty and representation that had animated more than twenty years' discussion of the relationship between citizen and government replicated themselves in miniature in the debate over the Right to Petition during the debates leading up to the adoption of the Bill of Rights. Petitioning was taken as a foundational part of the legislative process.

The Record before the Court shows that the Executive and Legislative branches have, in effect, abolished the Petition Clause without a constitutional amendment. In 1836, the House of Representatives, with the acquiescence of the Senate and the President, adopted the antebellum gag rule covering petitions from abolishionists.. For the first time in American history, the Government committed treason to the Constitution, acting as master with the People as servants, deciding it was not required to listen or respond to the People's Petitions for Redress of a constitutional tort – slavery. [2]

The Record before the Court shows John Quincy Adams led the fight to repeal the gag rule; it took eight years to do so, but by then Government's perception of and respect for the Constitution and the Petition Clause had changed. The Government

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[2] Had the Government honored the Petition Clause of the First Amendment, slavery might have ended without the Civil War.

saw that it could turn a blind eye to the Constitution ***and*** avoid being held accountable to anything but the collective majority.

The Record before the Court shows, however, that the Framers' intent was to recognize the Right to Petition (and the obligation of the Government to listen, deliberate and respond) as a natural, fundamental, unalienable Right, and that the Right to Petition would protect all other Rights.

The Record before the Court shows that following the gag rule, abolitionists and other Petitioners failed to stand up in defense of Petition and the Government's obligation to consider and respond. Instead, they began to alter the form of their Petitions. Petitions became abbreviated and anemic, seeking no real Redress as such, becoming mere pronouncements of political desire.

The Record before the Court shows that in place of the classic, constitutionally protected Petition, the gag rule proponents substituted a thoroughly liberal vision. They argued that the Right was co-extensive with voting. For its force, according to them, Petitioning depended on the number of potential voters who signed. Brute political power grounded in the franchise, rather than reciprocal obligation deeply rooted in social and political cohesion, underlay this politically convenient, but defective assertion.

The Record before the Court shows the Framers' intent behind the Petition Clause conflicts with the present Government's opinion (expressed in its filings in this case), that it is bound by no obligation

to listen or respond to the People's Petitions for Redress of Grievances because the Petition Clause does not state, in plain language that the Government has to listen or respond.

The Record before the Court shows the Framers' intent was to create a constitutional Republic based on individual Rights, not a democracy based on majority rule, with all matters couched in political terms, where the Rights of the individual and minority could be interpreted and denied by the majority.

The Record before the Court demonstrates that without a declaration by this Court of the full contours of the Right to Petition, based on the Framers' intent, the Executive and Legislative branches will have been successful in transforming the nation from a constitutional republic to a democracy, emphatically eschewed by the Founders in the interest of limited government, popular sovereignty and individual Rights, Freedoms and Liberties.

In the case before the bar the original intent of the Petition Clause was argued in both lower courts.

In her separate opinion, DC Circuit Judge Rogers further distinguished the instant case from *Smith* and *Knight* by recognizing that the historical context and purpose of the Petition clause, was not referred to or argued in *Smith* and *Knight*. Referring to the "precedent" of *Smith* and *Knight*, Judge Rogers wrote, "That precedent, however, does not refer to the historical evidence and we know from the briefs in *Knight* that the historical argument was not

presented to the Supreme Court." *We The People v. United States*, 485 F.3d 140,145.

Even where the plain language yields a clear interpretation, this Court has on many, many occasions rejected a plain language approach to construction in favor of a construction that accords weight to the original intent – that is, the historical context and the underlying purpose of the provision at issue. *Id*, 145-149.

B. ABDICATION OF DUTY AND TREASON TO THE CONSTITUTION NOT TO TAKE JURISDICTION

According to its own precedent, this Court would be abdicating its duty and committing treason to the Constitution if it fails to grant certiorari under the facts and circumstances of this case.

> "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid: but we cannot avoid them. All we can

> do is, to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. We find no exception to this grant, and we cannot insert one." (plaintiff's emphasis). *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).

The People are asking the Judiciary to define the contours of the meaning of the last ten words of the First Amendment. Nothing is more important to a free People faced with an Executive and Legislative who act and say with increasing frequency that "Events have overtaken the Constitution. The Constitution is merely a piece of paper. The Constitution is anachronistic and inappropriate."

The full contours of the meaning of the Petition Clause has remained undeclared by the Judicial branch since 1791. There was little need until now for the People to depend so absolutely on the power of the Right to Petition Government for Redress of constitutional torts.

The Constitution is all that stands between the People and total tyranny and despotism. It is unable to defend itself. If a free people can't defend in an Article III court, who can?

The court most certainly has the obligation to hear and determine first impression cases such as this, dealing as it does with the construction of the Constitution. That is its essential role. To fail to do so would be an abdication of its primary duty at best,

and "treason to the constitution" at worst, either way, a sure sign that the United States as well as her court system has been compromised at the highest levels.

C. SHAMEFUL NOT TO TAKE JURISDICTION

It would be shameful for the Court to fail to hear this case involving a first impression question of extreme public importance, i.e., the constitutional meaning of the last ten words of the *First Amendment*, while agreeing to hear many cases of far lesser import, including the probate/bankruptcy/defamation case of Anna Nicole Smith, where, ironically, one can find the following statement quoted from Justice Ginsburg (*Marshall v. Marshall,* at page 6);

> "In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 6 Wheat. 264, 404 (1821).

CONCLUSION

This is demonstrably a first impression case dealing with the construction of the First Amendment.

Appellants' emphasis on contemporary historical understanding and practices is consistent with the

Court's traditional interpretative approach to the *First Amendment.*

With all due respect, *Smith* and *Knight* are not on point. In addition, original intent was not argued in either *Smith* or *Knight.*

This case involves a fundamental Right involving the balance of power between the People and the Government as carefully crafted by Framers. To deny certiorari would be a denial of Due Process, arbitrary and capricious and an abuse of judicial discretion.

If it is only the non-dispositive "precedent" of *Smith* and *Knight* that is being used by the Court to deny the Appellants a declaration of their Rights under the Petition Clause, then the Courts have failed the Nation, the Constitution and the People and ought to be held accountable.

Never mind that understanding Petition's history unsettles the Executive's and Legislative's comfortable, self-serving assumptions about modern constitutionalism and the balance of power between the People and the Government.

History of the Right to Petition tells us that popular intervention in governance (constitutional, unmediated and personal) has remained invisible since the early nineteenth century because of our contemporary fixation on elections and majority rule (mass politics) as the instrument of political participation. The Right may have been forgotten, but it has not been lost. Now, more than ever, it needs to be revived.

The original intent of the Framers was that a Petition be an affirmative, remedial Right which required governmental hearing and response. Petitioning was to be a Right enjoyed by all persons and one which all classes and strata exercised to some degree, both individually and collectively. To miss both the mandatory and participatory features of the Right to Petition is to put on modern blinders, seeing only in enfranchisement the instrument of political participation.

Appellants pray the Court will grant certiorari, and be willing to remain open to an historical explanation that involves not just a modern process-based understanding of the structure of government, but also one that suggests the substantive breadth of the Right to Petition Government for Redress of constitutional torts as intended by the Framers.

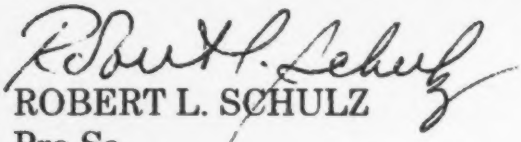
Shall the People in republican America, with its written Constitution for the protection of the public rights and a body of strictly limited powers, now be forbidden to do that which the Framers intended?

Shall the People have no guarantees for the public and individual liberties except laws and prescriptive usages, all of them confessedly at the will of an omnipotent Executive and Legislative?

Forbid it Reason. Forbid it Justice. Forbid it Liberty. Forbid it the beatified spirits of the revolutionary sages, who stand vigilant watch in heaven over the safety and destiny of this Republic.

CERTIFICATION

This petition for rehearing is restricted to the grounds specified in Rule 44, paragraph 2 and is presented in good faith and not for delay. The text has 2994 words including footnotes.



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